

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
at CHATTANOOGA**

<b>IN RE: SKELAXIN (METAXALONE) ANTITRUST LITIGATION</b>	<b>Case No. 1:12-md-2343 Chief Judge Curtis L. Collier</b>
<b>THIS DOCUMENT RELATES TO:</b>  <b><i>CLASS PLAINTIFFS (NO. 1:12-MD-02343)</i></b> <b><i>WALGREEN (No. 1:12-cv-203)</i></b> <b><i>RITE AID (No. 1:13-cv-5)</i></b>	

**STIPULATION RE: PLAINTIFFS' RULE 30(b)(6) NOTICES TO KING**

WHEREAS, on October 11 2013, Plaintiffs in the *Walgreen* and *Rite Aid* actions served Defendant King Pharmaceuticals, LLC (f/k/a King Pharmaceuticals, Inc.) (“King”) with a deposition notice pursuant to Fed. R. Civ. P. 30(b)(6) seeking testimony on certain subjects related to King’s forecasts of generic metaxalone entry (“*Walgreen/Rite-Aid Notice*”);

WHEREAS, on October 18, 2013, Class Plaintiffs in the MDL proceedings served King with a deposition notice pursuant to Fed. R. Civ. P. 30(b)(6) seeking testimony on certain subjects related to, *inter alia*, (a) King’s forecasts, financial projections, or retrospective financial analyses, in Matters for Examination 3, 5, 6 and 7, and (b) King’s actual and forecasted profit and loss statements for Skelaxin (or other Metaxalone Product), in Matter for Examination 4(c) (collectively, the “Agreed MDL Notice Topics”);

WHEREAS, King has informed Plaintiffs that witnesses with personal knowledge of the subjects on which testimony is sought are no longer employed by King and that any witness produced by King in response to the *Walgreen/Rite-Aid Notice* and Agreed MDL Notice

Topics would testify, in large part, on the basis of his or her review of documents that have been produced by or to King relating to those subjects;

WHEREAS, Plaintiffs and King are willing to enter into this Stipulation in order to avoid an unnecessary expenditure of time and effort by both sides;

THEREFORE, the parties hereby stipulate and agree as follows:

1. Within five (5) business days of the execution of this Stipulation by all parties, King will identify to Plaintiffs by document production number a manageable number of documents that relate to the subjects identified in the *Walgreen/Rite-Aid* Notice and Agreed MDL Notice Topics and that King would ask its Rule 30(b)(6) witness to review in order to testify in the absence of this Stipulation which is intended to obviate the need for any such deposition.

2. Within five (5) business days of Defendants' identification of documents pursuant to paragraph 1, Plaintiffs may identify to King by document production number a manageable number of additional documents produced by King that relate to the subjects identified in the *Walgreen/Rite-Aid* Notice and Agreed MDL Notice Topics and that they would reasonably present to King's Rule 30(b)(6) witness to elicit testimony on those subjects.

3. Within ten (10) business days of the identification of the documents in paragraph 2, and subject to King's review of the documents, King will stipulate that any internal King documents identified pursuant to paragraphs 1 and 2 above: (a) are authentic under Fed. R. Evid. 901; (b) are records of regularly conducted activity under Fed. R. Evid. 803(6); and (c) each accurately reflects a projection or projections made by a King employee or consultant at or about the date of the document as to the possible effects of generic entry, reflecting the views of such employee or consultant at the time of its creation as to such possible effects set forth as part

of the employee's or consultant's performance of his or her duties and responsibilities as an employee or consultant of King, and that, if King were to produce a Rule 30(b)(6) witness in response to the *Walgreen/Rite-Aid* Notice and Agreed MDL Notice Topics, the witness would so testify under oath. King does not stipulate that the use of any particular generic entry date in such a document reflects a belief by King, or the document's drafter, that generic entry would actually occur on that date or that any projections constitute reliable predictions as to the behavior of actual markets, and reserves all arguments as to the relevance and reliability of the documents as evidence in this or any other litigation.

4. In the event that King produces additional documents after the date of this stipulation that relate to the subjects identified in the *Walgreen/Rite-Aid* Notice and Agreed MDL Notice Topics, of a type materially different than the types of documents previously produced to plaintiffs by King, Plaintiffs would have fifteen (15) days after said production to identify these documents to King, which will trigger King's obligation under paragraph 3 above.

5. Nothing in this Stipulation constitutes an agreement or admission that any of the documents identified pursuant to paragraphs 1 and 2 above are relevant or admissible.

6. King will not offer testimony at trial that contradicts any portion of this Stipulation.

7. King represents that it has no current employees who are capable of testifying with personal knowledge under Fed. R. Evid. 602 on any of the subjects identified in the Notice.

8. In the event that King decides to call a fact witness at trial, who has not previously been deposed in connection with this litigation, to testify with respect to any of the subjects in the *Walgreen/Rite-Aid* Notice and Agreed MDL Notice Topics, it will so notify

Plaintiffs no later than fifteen (15) days prior to the date when the parties submit their final pretrial order and afford Plaintiffs an opportunity to depose that witness or witnesses within a reasonable time of providing such notice, notwithstanding the fact that fact discovery might have closed.

9. The agreement in Paragraph 8 will not preclude King from calling a previously deposed fact witness at trial.

Respectfully submitted and agreed to this 8th day of January, 2013,

**/s/ Saul P. Morgenstern**

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on January 8, 2014 a true and correct copy of the foregoing was served electronically on all counsel via the Court's CM/ECF system.

/s/ Monica L. Rebuck

Monica L. Rebuck